

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of

Kent Aaron NIXON	Conf. 9590
Application No. 10/568,879	Group 3632
Filed July 21, 2006	Examiner Kimberly T. Wood

DRINK CONTAINER HOLDING APPARATUS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Assistant Commissioner for Patents	June 14, 2011
P.O. Box 1450	
Alexandria, VA 22313-1450	

Sir:

Applicant requests a pre-appeal brief review of the
final rejection in the above-identified application.

No amendments are being filed with this request.

A Notice of Appeal is filed herewith.

Respectfully submitted,

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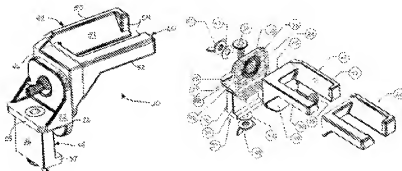
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REASONS IN SUPPORT OF REQUEST FOR REVIEW

A pre-appeal brief review is respectfully requested as to claims 57-70 being rejected under 35 U.S.C. 103(a) over Leasure 6,679,465 in view of Kurtz 5,996,957.

Claim 57 recites a drink container holding apparatus, comprising i) an object attachment device adapted for attachment to an object and including a holder engagement portion; and ii) a drink container holder including an attachment device engagement portion to engage with the holder engagement portion, wherein the holder engagement portion and the attachment device engagement portion, when engaged, allow free relative angular movement between the object attachment device and the drink container holder in a selected plane, and the drink container holder and the object attachment device are engaged or disengaged by orientating the holder engagement portion and the attachment device engagement portion in a pre-determined relative angular disposition in the selected plane and moving the attachment device engagement portion and holder engagement portion relative to each other in a direction perpendicular to the selected plane to effect the engagement or disengagement. In claim 69 the drink container holder includes a ring for receiving a drink container; in claim 70 the drink container holder includes a frame to carry or hold a drink container.

I. The Examiner asserts that Leasure discloses all of the limitations of the claimed invention except for the "drink holder 42" being a ring and a frame.



This is factually incorrect. Element 42 is not a drink container holder. Element 42 is a bow rest. One of skill would not consider Leasure a drink container holder.

This is also legally incorrect. In actually analyzing the claims, the Examiner fails to properly interpret the claims' terms. More specifically, the Examiner gives the meaning of the claim terms a meaning inconsistent within the specification.

MPEP § 2111 provides guidance in giving the pending claims their broadest reasonable interpretation consistent with the specification; however, MPEP § 2111 does not authorize that the claim terms can take on any conceivable meaning the Examiner may create. The Examiner is limited such that the broadest reasonable interpretation of the claims is consistent with the interpretation that those skilled in the art would reach. It is not consistent with

the specification to consider the bow rest 42 as being a drink container holder.

II. Further, Leasure is nonanalogous art to the claimed invention. Leasure solves the specific problem of holding a hunting bow in a rigid orientation relative to a non-moving structure. Leasure solves this by providing a mount that rigidly holds the bow in the mount. The mount is then rigidly attached to an item (usually part of a hunting hide). The result is to support the bow's weight so a hunter's (user) arm does not tire while waiting for prey to come within the shooting range of the bow and arrow.

Therefore, a person seeking to make the claimed free-swinging container holder, to allow a container to move independently to the item the free-swinging container holder is mounted to, would not look to the solutions for rigidly supporting a hunting bow disclosed by Leasure.

III. Still further, the solution in Leasure is for mounting to a stationary item when Leasure is in use.

Any movement, particularly that of free-swinging and uncontrolled movement as in the present invention, would detract from the purpose of Leasure. Such movement would startle or warn potential prey (see column 1 lines 13-17). A person seeking to solve the problem of a mount to a moving item would not look to rigid mounts for bows. Indeed, the modification to Leasure suggested by the Examiner would render Leasure unsuitable for its intended use.

IV. There is a clear and non-obvious difference between the disclosures of Leasure and Kurtz and the claimed invention.

Leasure discloses a rigid holder for an object, in Leasure's case the bow of a bow and arrow for hunting, whereas the claimed invention clearly requires allowing free relative angular movement between the object attachment device and the drink container holder.

This "free relative angular movement" is not present in either of Kurtz or Leasure, even when combined.

V. Further, neither reference, even when combined, teaches or suggests towards the solution of the present invention. First, Leasure seeks to hold rigidly an object and does not allow for any relative movement of the object holder to that which the object holder is pivoted on. Any free movement in the holder of Leasure is undesirable as it would startle or warn prey. Kurtz also fails to disclose free relative movement of the drink holder to that which it is pivoted or attached to.

It would therefore be non-obvious for a person skilled in the art to add the further inventive feature of free (little or no friction and under the gravity action) angular relative movement to Leasure, where such movement is between the object attachment device and the drink container holder and in a selected plane.

Leasure clearly spells out its intended use to hold a bow in a desired posture with no free movement of the bow once the desired posture is selected. The solution to the rigid holding intent is clearly shown in the detailed disclosure about ratchet faces (integer 24) between the base plate (22) and the mating face to the ratchet face 46. These allow adjustment to the desired posture on which the mount of Leasure is then locked into position. Therefore, even when a bow is placed in the holder of Leasure, there would not be any free relative angular movement.

In complete contrast to the "free relative angular movement" of the present invention, the sole reason for the existence of Leasure is to hold a bow in a steady and locked arrangement, i.e., preventing any free angular movement.

Similarly, Kurtz has a serrated contact (42) allowing the drink holder to be set to certain specific angles. Thus, there would also be no free movement in Kurtz.

Claims 57, 69, and 70 are therefore clearly non-obvious. The remaining dependent claims are allowable at least for depending from an allowable claim.

Therefore, the present rejection is based on factual and legal error and should be withdrawn. Withdrawal of the pending rejection is solicited.